

State of California  
Regional Water Quality Control Board  
San Diego Region

EXECUTIVE OFFICER SUMMARY REPORT  
June 10, 2004

ITEM: 16

SUBJECT: PUBLIC HEARING: Administrative Assessment for Civil Liability against various Dischargers for Non-Payment of fiscal year 2003 construction storm water annual fees in violation of California Water Code section 13260. The Regional Board will decide on an order assessing liability. (*Vicente Rodriguez*)

PURPOSE: The Regional Board will decide on the allegations of failure to pay annual fees and whether to adopt an order that assess civil liability.

PUBLIC NOTICE: A public notice was posted on the Regional Board web page on May 5, 2004 and published in the Orange County Register and the San Diego Union-Tribune on May 7, 2004 and in the Riverside Press Enterprise on May 8, 2004. The written comment period ended on June 2, 2004, and the oral comment period ends at the June 10, 2004 Regional Board hearing.

DISCUSSION: On April 23, 2004, the Executive Officer issued 31 complaints for Administrative Assessment for Civil Liability against dischargers for failure to pay fiscal year 2003 construction storm water annual fees in violation of California Water Code section 13260. The 31 dischargers are those that failed to respond to 1) the original invoice issued by the State Water Resources Control Board (State Board) in November 2003, 2) the Demand Letter issued in January 2004, and 3) the Notice of Violation issued in February 2004.

The complaints were issued approximately 45 days after the State Board's NOV's were issued and fully 130 days after the annual fees were due to be paid. The complaints recommended liability of \$1,310 or \$1,410 reflecting an assessment of \$10 per day of violation. The State's cost of developing and defending an ACL before the Regional Board was a factor considered in calculating the liability. The State Board will reimburse Regional Board staff costs up to a maximum of one-half the amount of liability collected. The average collection procedure of this nature costs the State \$400.

Of the 31 complaints issued, 16 dischargers waived their rights to a hearing (Item 11); one complaint was withdrawn upon documentation that discharger is in bankruptcy; and four complaints were withdrawn due to new information.

The remaining ten complaints are scheduled for Public Hearing under Item 16 in today's agenda. These complaints can be separated into the following three groups:

#### 1. WAIVED HEARING

Those that submitted a signed waiver of right to a hearing prior to the June 10, 2004 Regional Board meeting but after May 19, 2004 deadline established in Complaint. These dischargers:

- a. Agreed not to argue against the allegations;
- b. Submitted full payment of the liability; and
- c. Paid the amount of the annual fee or demonstrate it was not applicable.

As of the first agenda mailing (May 27, 2004), there are no dischargers in this category. Dischargers submitting waivers prior to the supplemental agenda mail will be identified and a recommendation for revising the liability.

#### 2. CONTESTED

These dischargers have communicated to the Regional Board their intent to contest the allegations or the recommended liability.

As of the first agenda mailing (May 27, 2004), there are six dischargers in this category (Supporting Document No. 1):

- 16-A Bridgeport Builders
- 16-B Landgrant Development
- 16-D Metropolitan Transit Development Board
- 16-F San Diego Unified School District
- 16-G San Diego Unified School District
- 16-I Sares Regis Group

#### 3. NO RESPONSE

These dischargers have not responded to the allegations nor the amount of the civil liability.

As of the first agenda mailing (May 27, 2004), there are four dischargers in this category (Supporting Document No. 1):

16-C Mesa Verde Del Mar  
16-E Rancho La Costa Village LLC  
16-H San Marcos 54 LLC  
16-J Taylor Woodrow Homes

The final disposition of any complaint in a category may be modified together with the final recommendation of liability to assess based on correspondence received prior to the supplemental agenda mail.

**State and Regional Board Enforcement Process for Invoices for Annual Fees**

The State Board and the Regional Board reliance on revenues from annual fees to support the cost of regulating permitted discharges has significantly increased as allocation from the general fund has been significantly curtailed. Consequently, the timely and efficient collection of annual fees has increasingly become an important issue.

Most dischargers with waste discharge requirements have exercised reasonable care and have paid their annual fees. However, a number of invoices for annual fees remain outstanding. Dischargers are provided ample opportunity to either pay the annual fee or demonstrate the project is completed through submittal of a Notice of Termination. Those dischargers that ignore the notices and subsequent warnings, whether through negligence or intent, cost the State additional resources and are the focus of these ACL complaints.

The following is the process followed by the State Board in invoicing and collecting annual fees prior to the Regional Board's initiation of enforcement action.

1. Storm Water Annual Fees are invoiced on a quarterly basis. For fiscal year 2003, the first and second quarter invoices were mailed in November 2003. The dischargers were given a 30-day deadline to pay the fee. Most dischargers exercised reasonable care by either paying the fee or by submitting a Notice of Termination (NOT) or otherwise demonstrating why they should no longer be subject to the storm water permit.
2. In January 2004, approximately 60 days after the initial invoice, the State Board issued "Demand Letters" to those

dischargers that failed to pay the initial fee notice. The dischargers were not penalized if they then paid the fee or submitted an NOT or otherwise demonstrated why they should no longer be subject to the storm water permit

3. In February 2004, approximately 90 days after the initial invoice, the State Board issued Notice of Violations (NOV) to those dischargers that had yet to pay outstanding invoices. The NOVs warned that failure to pay the annual fee would make a discharger liable for assessment of civil liability from the date the invoice was due, in addition to the original invoice amount. Dischargers were not penalized if they then paid the fee or submitted an NOT or otherwise demonstrated why they should no longer be subject to the storm water permit

After this third step in the process, a discharger has made a decision three times not to pay the annual fee nor to exercise reasonable care by notifying the state or by submitting an NOT or otherwise demonstrating why they should no longer be subject to the storm water permit.

At that time, the Executive Officer determines whether to issue complaints for assessment of civil liability to owner/operators of the facilities of the remaining outstanding invoices.

**LEGAL CONCERNS:**

None.

**SUPPORTING  
DOCUMENTS:**

1. Table 1. Summary of Dischargers that did not waive their right to a hearing by May 19, 2004.
2. Location Map of Dischargers in Table 1.

**RECOMMENDATION:**

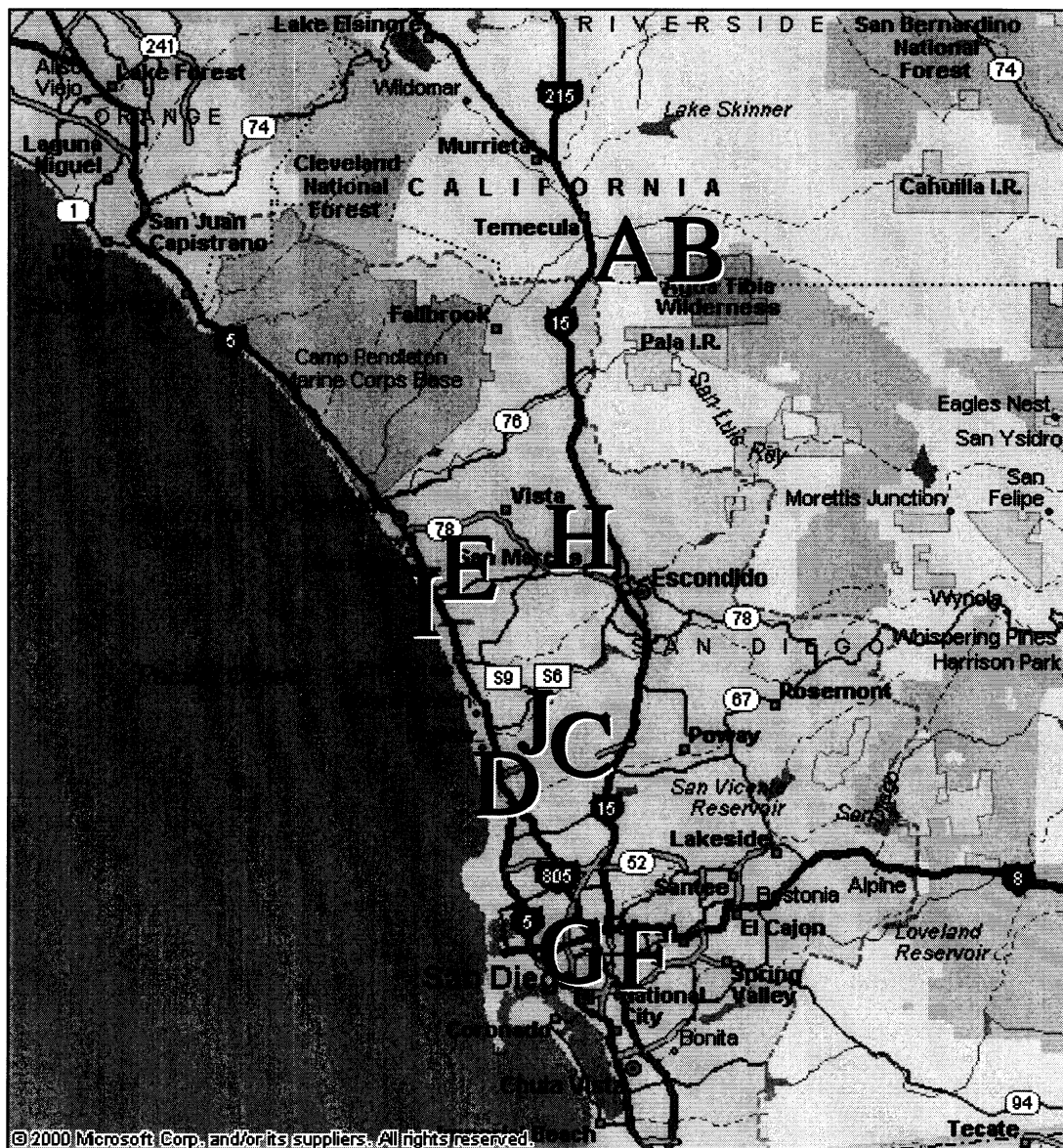
Adopt Tentative ACL Orders for items 16-A through 16-J as summarized in Table 1.

# Table 1.

# Item 16-1

## SUMMARY OF DISCHARGERS THAT DID NOT WAIVE THEIR RIGHT TO A HEARING BY MAY 19, 2004

NO	FACILITY NAME	LOCATION	CITY	WDID	TENTATIVE ACL ORDER NO.
A	BRIDGEPORT BUILDERS LLC BRIDGEPORT BUILDERS	CONSTANCE ST	TEMECULA	S9 33C319394	R9-2004-0197
B	LANDGRANT DEV 27987 VAIL RNCH CTR	PM HWY 79 SOUTH	TEMECULA	S9 33C311818	R9-2004-0209
C	MESA VERDE DEL MAR DEER CANYON SEWER	DEER CANYON	SAN DIEGO	S9 37C317102	R9-2004-0211
D	METROPOLITAN TRANSIT DEV SORRENTO VALLEY COMMUTER STATION	ADJ TO SORRENTO VALLEY RD	SAN DIEGO	S9 37C318628	R9-2004-0212
E	RANCHO LA COSTA VILL LLC RANCHO LA COSTA VILLAGE	RANCHO SANTA FE AND LA COSTA	CARLSBAD	S9 37C314585	R9-2004-0214
F	SAN DIEGO UNIFIED SCH DIST BROOKLYN KIMBROUGH AREA ELEMENTARY	A ST AND C ST AND 33RD ST	SAN DIEGO	S9 37C319073	R9-2004-0217
G	SAN DIEGO UNIFIED SCH DIST NEW WINONA AREA ELEMENTARY SCHOOL	WINONA AVE 7 ESTRELLA AVE	SAN DIEGO	S9 37C318738	R9-2004-0218
H	SAN MARCOS 54 LLC SAN MARCOS TRACT 419	MISSION RD BT LIBERTY & COMET	SAN MARCOS	S9 37C319236	R9-2004-0219
I	SARES REGIS GRP WINDSONG SHORES	4200 HARBOR DR	CARLSBAD	S9 37C312196	R9-2004-0220
J	TAYLOR WOODROW HOMES CASITAS	7220 BLACK MOUNTAIN RD	SAN DIEGO	S9 37C316182	R9-2004-0222



Location Map of Discharges in Table 1.